

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

JOHN RICHARD JAE,

CIVIL No. 1-01-00

Plaintiff

VS.

JUDGE'S COPY

U.S. District Judge

Magistrate Judge

DR. ROBERT CLARK, MARTIN L.

DRAGOVICH, JOHN A. PALANICH,

ROBERT N. NOVOTNEY, MICHAEL

J. KAZOR and JOHN ANDRADE,

Defendants.

FILED

JAN 9 - 2001

PER [Signature] DEPUTY CLERK

PLAINTIFF'S REPLY BRIEF IN OPPOSITION TO
DEFENDANT DR. CLARK'S BRIEF IN SUPPORT
MOTION TO DISMISS PLAINTIFF'S COMPLAINT

I. RELEVANT STATEMENT OF THE CASE

On or About June 5, 2000, Plaintiff John
Richard Jae, a Pennsylvania State Prison
filed a 42 U.S.C. § 1983 Civil Rights Complaint
Defendant Dr. Robert Clark, Chief Psychiatrist
Camp Hill.

On or About October 10, 2000, Defendant
filed a Motion To Dismiss Plaintiff's Complaint
on About October 24, 2000, filed his Brief
Appendix of Exhibits in support of such Motion.

THIS IS PLAINTIFF'S Reply Brief In Opposition
Defendant Dr. Clark's Motion To Dismiss Plaintiff.

II. QUESTION PRESENTED

A. ~~WHETHER~~ ~~PLAINTIFF'S COMPLAINT~~
COMPLAINT MUST BE DISMISSED AS A
MATTER OF LAW FOR FAILURE TO
EXHAUST ADMINISTRATIVE REMEDIES

Suggested Answer: No

III. ARGUMENTS

I. 42 U.S.C. § 1997e (a), as amended by the
IS UNCONSTITUTIONAL AS IT
Immissibly Infringes Upon AND
VIOLATES ~~THE~~ DECISIONS OF THE SUPREME
COURT OF THE UNITED STATES WHICH IS THE
SUPREME LAW OF THE LAND LIKE THE U.S.
States Constitution.

Plaintiff avers & submits, that 42 U.S.C.
§ 1997e(a), as amended by the PLRA, is unconstitutional
as it immissibly infringes upon and violates
decisions of the United States Supreme Court
in Foley v. Board of Regents of the State of
Florida, 457 U.S. 496, 102 S.Ct. 2557 (1982)
in Monroe v. Pape, 365 U.S. 167, 183, 81 S.Ct. 147
(1961) - which both hold that a State prisoner
does not have to exhaust his prison's Administrative
Remedies before filing a 42 U.S.C. § 1983
Rights Action in federal court, & since decisions
of the United States Supreme Court, like the
Constitution itself, are the Supreme Law of the
Land, Congress exceeded its authority in enacting

II. 42 U.S.C. § 1997e(a), as Amended By The
Is Unconstitutional, As It Imprem
Singles Out And Treats Prisoners Diff
Than Others And Thus Denies Prisoners E
Protection / Treatment Of The Law Under The
Fourteenth Amendment Of The United States Con

Plaintiff avers & submits, that 42 U.S.
as amended by the PLRA, Is unconstitutional
It impremisibly singles out and treats pr
differently than others (i.e., non-prisoners)
thus denies prisoners equal protection / t
of the law under the Fourteenth Amendment
United States Constitution, and becau
congress is not permitted to enact any
which would any provision of the United S
Constitution, which is the Supreme Law o
Land, Congress exceed its authority in
42 U.S.C. § 1997e(a).

III. Plaintiff's Reply To Defendant Clank
Claims And Arguments.

1 Defendant Dr. Clank first claims t
"On June 1, 1999 -"

care which he received at that facility.
 However, in reply to such, the Plaintiff alleges that such is "not true & is a lie" as he did not file a complaint pursuant to 42 U.S.C. § 1983 against Dr. Clark, in 2000, arising out of the medical care which he received at that facility, but rather he filed the complaint against Dr. Clark, on June 5, 2000, for and based upon the same facts as is recited therein pp. 1-2 of Plaintiff's Reply Brief In Opposition To Defendant's Motion To Revoke Plaintiff's Informa Ripens Status And To Filing Of Responsive Pleading, which hereto here incorporates herein by reference hereunto the same. Thus, the above claim of Defendant Dr. Clark is factually frivolous & an untrue "lie" & by such Dr. Clark & his counsel have committed fraud.

Defendant Dr. Clark next claims & argues that the Pennsylvania Department of Corrections has adopted a consolidated Inmate Grievance Review, DC-ADM. #804 (effective October 20, 1994) with certain exceptions, DC-ADM. #804, Section VI provides that after an attempted informal resolution of the problem, a written grievance may be submitted to the Grievance Coordinator. An appeal from the Coordinator's decision may be made in writing to a Facility Manager or Community Corrections Regional Director, and a final written decision may be made by the Regional Director.
 / See Defendant Dr. Clark's Brief In Support Of Motion To Dismiss Plaintiff's Complaint at 5, wherein the Defendant Dr. Clark's 10/24/00 Brief is.

appeal may be presented to the Central Office Review Committee. If the grievance concerns an alleged medical problem, any appeal must be taken to the Central Office Medical Review Committee.

However, in reply to the above, the plaintiff over submits, that such is not completely true. DC-ADM-804 has been amended several times since its enactment in 1994 & DC-ADM-804-1.7 discontinued the Central Office Medical Review Committee and all appeals on a grievance concerning an alleged medical problem to such committee, effective May 20, 1996, and DC-ADM-804-2 (1) effective November 1, 1997.

"The procedures for appeal to final review under DC-ADM 804, VI, D, 5-7 are amended as follows:

(1) The Chief Hearing Examiner will replace the Central Office Review Committee (CIRC) at final review of all grievance appeals. The Chief Hearing Examiner will perform all functions previously performed by CIRC."

and therefore, given the above-referenced/amendments to DC-ADM 804, Defendant Dr. Clark's claims/arguments "are" clearly untrue, out of moot and this Court may not, by law, consider

such.

Defendant Dr. Clark next claims & argues, that

"Nowhere in his Complaint and/or Amended Complaint against Dr. Clark does Plaintiff allege that he has filed any institutional grievance complaint with respect to

2/See Defendant Dr. Clark's 10/24/00 Brief at

the medical care which he received from Dr. Clark while incarcerated at SCI - Camp Hill. Since no initial grievance was filed with the Department of Corrections, Plaintiff has not and cannot, pursue any administrative appeals including any appeal to the Central Office Medical Review Committee. Thus, it is readily apparent from the face of the Complaints that Plaintiff has failed to exhaust available administrative remedies prior to initiating this civil action. Consequently, Plaintiff's Complaints must be dismissed until such time as he has pursued all of the steps of the inmate grievance procedure, including any and all administrative appeals. 113/

However, by reply to the above, ^{the} Plaintiff avers submits, that, first of all, he must ask, what is the matter with Defendant Dr. Clark's cancer? he dumb, blind or stupid, or all three of the above. For, while it is true that this Plaintiff does state/allege that he had filed any prison grievance complaint with respect to the medical care which he received from Dr. Clark while incarcerated at SCI - Camp Hill, (because he did not receive any medical care from Dr. Clark, as Defendant Dr. Clark did not provide any medical care as he "is" a Psychiatrist "not" a medical doctor) - it is as plain as the nose on defense counsel's face, that the Plaintiff "did" allege in his initial complaint 3/see Defendant Dr. Clark's 10/24/00 Brief, at 2.

6

that he filed a grievance on the facts that he sues Defendant Dr. Clark for in his complaint; herein this case on May 10, 2000, at that such prison grievance was received by the Prison Grievance Coordinator and Grievance No. CAM-0894-00 was assigned to such grievance & that the Grievance Coordinator assigned such grievance.

Ms. Law, the SCI-Camp Hill Corrections Health Care Administrator (CHCA) for investigation and decision. 4/ that, in accordance with Dr. #804. K.B. 31, §4, of the Pa. Dept. of Corrections Ms. Law had ten (10) working days in which to investigate, personally interview this inmate plaintiff & provide her written decision here and for such grievance. 5/ that, Ms. Law refused to do so and the tenth working day expired May 23, 2000, and that, therefore, this Plaintiff had tried & was unable to exhaust his Administrative Remedies on this here grievance, due to Ms. Law, CHCA, (Prison Staff) failure/refusal to follow mandatory Prison Grievance Policy & investigate & decide such Grievance & due to the seriousness of the issues involved herein this complaint and the risk of danger of serious physical injury to this Plaintiff he could not afford to wait no longer to file this here complaint / civil action with this court. 7/ and

4/ See Plaintiff's Initial Complaint, at Paragraph No. 30.
 5/ See Id., at Paragraph No. 31.
 6/ See Id., at Paragraph No. 32.
 7/ See Id., at Paragraph No. 33.

At this date, Ms. Law has never filed her decision on such grievance no. CHM-0894.

Plaintiff can only be required to exhaust those Administrative Remedies which are available to him, see Camp v. Brennan, 2 F.3d 279 (3d Cir. 2000), and by refusing/failing to render a written decision within the mandatory ten (10) working day period decision on a Grievance (DC-ADMZ #804 VI) and/or even to this here date, Ms. Law renders the remaining administrative remedies (appeals) unavailable to this here inmate/plaintiff, as he cannot use such until he receives a written initial review decision on such grievance which to appeal from & here he did "not" receive such. Furthermore, plaintiff questions how long must he wait for a decision on a grievance he files? This court would rule that he must no matter what wait until he fully exhausts Prison Administrative Remedies before taking his Complaint with the Court, than such would mean that prison staff could violate a lot of the time requirements for deciding Prison Grievance or an appeal thereon & to as long as they want to decide such or to matter never decide such, and this cannot be the result Congress intended in amending U.S.C. § 1997e(a), to require exhaustion of administrative remedies - and such would turn the situation on its head & severely impede plaintiff's First Amendment rights.

Rights of access to the courts. No, as Plaintiff avers & submits, once he files a prison grievance, prison staff refuse to decide such an appeal such in writing within the mandatory time limit requirement under DC-ADM #804. Plaintiff should not have to exhaust any further administrative remedies on such before his Complaint with the court as such remedies which he may have left would be rendered unavailable to him thru no fault of his own but thru prison staff's failure to comply with the mandatory time limits for decision. Federal Courts have ruled this way & so should this.

Second of all, by reply to such claim/argument Defendant Dr. Clark's, the Plaintiff avers & submits that his Amended Complaint did not even apply to Defendant Dr. Clark, but only to correctional Defendants, herein this case, & thus Defendant Clark has no standing at all to argue that the plaintiff did not exhaust his administrative remedies before he filed such with this court. Plaintiff could not have filed a prison grievance about that raised therein his Amended Complaint. DC-ADM #804 VI-E-2. prohibits him from doing so. Third of all, for the reasons/arguments listed above supra, at 6-8, this court should not dismiss the Complaints here until such time as plaintiff has pursued all of the steps of the inmate grievance procedure including any full administrative appeals, and are not available to him and the inmates.

Clark cites in his Brief, Peoples v. Mahajan, No. 3:97-cv-0205 (M.D. Pa. 1997) and Payton v. Horn, 99 F. Supp. 2d 1791, 1797 (E.D. Pa. 1999). Such are not be applied to this plaintiff based upon the plaintiff's foregoing arguments, herein, arts. 97 and because such case are distinguishable from the here instant case and because such are not the controlling law, as the 3rd Circuit's recent decision/holding in Campbell v. Brennan, 219 F.3d 279 (3d Cir. 2000) is the controlling law here on this.

IN CONCLUSION

Based upon the above foregoing, facts, arguments & citations of authorities, herein Defendant Clark has failed to show that he is entitled to have Plaintiff's Complaint in this instant case dismissed & as a matter of law, this Court is required to deny Defendant Clark's Motion to Dismiss Plaintiff's Complaint herein this case and must order Defendant Clark to answer Plaintiff's initial Complaint herein this case within ten (10) days of receipt of the Court's order or that a judgment by default will be entered against him herein this case.

RESPECTFULLY SUBMITTED,

(s) John Richard Stine
MR. JOHN RICHARD STINE
Plaintiff and Pro Se Counsel

Dated: 28/11/2000 MR. John Richard Stine
Sci-Green, Inc.
175 Progress Drive
Waynesburg, PA 15370

VERIFICATION

I, Plaintiff and Abuse Counsel John Richard Jacob, verify under the penalty of perjury that the foregoing is true & correct to the best of my knowledge & belief, pursuant to 28 U.S.C. § 1746.

(S) ~~John Richard Jacob~~
MR. JOHN RICHARD JACOB
#BR-3219
SCI-Greene/SMU
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Waynesburg, PA 15370
Plaintiff and Abuse Counsel

Dated/Executed on:
30th DECEMBER 2000:
At: Waynesburg, Pennsylvania:

Jae vs. Clark, et al.
 CMR No. 1 = CK-00-1090
CERTIFICATE OF SERVICE

I certify that on 1-02-00
 I mailed to the Pennsylvania State Court a true and correct carbon copy of the writ
 Plaintiff's Reply Brief in Opposition to ~~Defendant's~~
~~Brief in Support of Motion to Dismiss Plaintiff's~~
 Way of U.S. 1st Class Mail, postage pre-paid.

I certify that on 1/02/00, I gave to USPS officials
 for mailing to this Court, to original of the above-said
 document.

I certify under penalty of perjury & pursuant to 28 USC
 §1746, that the above is true & correct.

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Dated/Executed on:
 2nd JANUARY 2001:
 At Harrisburg, Pennsylvania

(S) John Richard J.
 MR. JOHN RICHARD J.
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 Plaintiff and P.O. Clerk

JAE vs. Clark, et al.
 CIV No. 1:00-cv-00-1090
CERTIFICATE OF SERVICE

I certify that on 1/02/00, I mailed to the persons below, a true & correct copy of the within Motion For Appointment of Counsel along with the Brief In Support, Way of U.S. 1st Class Mail, Postage Prepaid.

I certify that on 1/02/00, I gave to a person authorized for mailing to this Court, the originals of each of the above documents.

I certify under penalty of perjury that the above, is & correct pursuant to 28 U.S.C. § 1746.

MR. James D. King, Esquire
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Dated/Executed on =
 2nd JANUARY 2000 =
 At = Harrisburg, Pennsylvania =

(s) John Richard
 MR. JOHN RICHARD
 Plaintiff and Res Coe

Joe vs. Clark, et al.
 CIVIL No. 1:CV-00-1090
CERTIFICATE OF SERVICE

I certify that on 1-02-01, I mailed to the persons listed below a true & correct copy of the within Plaintiff's Brief In Opposition To Corrections Dept. Motion To Revoke Plaintiff's Informa Fauper's Status And To Defer Filing of responsive pleading to Plaintiff's Amended Complaint and Exhibits To Brief In Opposition Corrections Defendants' Motion To Revoke Plaintiff's Informa Fauper's Status And To Defer Filing of responsive pleading to Plaintiff's Amended Complaint, by way of U.S. 1st class Mail, Post Paid:

I certify that on 1-02-01, I gave to an official here for mailing to this Court, the originals of each of the above documents:

I certify under penalty of perjury that the above is true and correct pursuant to 28 U.S.C. § 1746:

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Dated/Executed on:

2nd JANUARY 2001:

At: Waynesburg, Pennsylvania:

(s) John Richard
 MR. JOHN RICHARD
 Plaintiff and Respondent

James Clark et al.
 CIV No. 1:00-cv-1090
CERTIFICATE OF SERVICE

I Certify under penalty of perjury & pursuant to 28 U.S.C. § 1746, that on 1/02/01, I mailed to the persons listed below, a true & correct carbon copy of each of the within Motion Requesting Appointment of A Mental Health Expert, Inter Alia Motion for Stay, along with Brief in support, by way of U.S. 1st Class Mail, Registered.

I Certify under penalty of perjury & pursuant to 28 U.S.C. § 1746, that on 1/02/01, I gave to Prison Officials here for mailing this with the originals of the above-same documents:

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 2nd JANUARY 2001:
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 Plaintiff and Prisoner